

21 C.J.S. Courts § 317

Corpus Juris Secundum | May 2023 Update

Courts

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IX. Court Commissioners

B. Powers and Immunity

§ 317. Evidentiary rulings of court commissioners; issuance of search or arrest warrants

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Court Commissioners](#)  3, 4

A court commissioner lacks authority to make legal rulings regarding the admissibility of evidence or to issue search warrants, but under statutory provisions in some states, court commissioners may be authorized to conduct evidentiary hearings and issue warrants.

There is authority holding that a court commissioner does not have the authority to exclude evidence or make legal rulings regarding the admissibility of evidence since this is a plenary judicial responsibility as distinct from adjunct fact-finding.¹ By contrast, under a statutory provision expressly empowering a master commissioner to conduct trials and evidentiary hearings, a master commissioner has the authority to rule upon a motion in limine in a criminal trial.² It has also been held that a trial court's delegation of power to a court commissioner to conduct evidentiary hearings is not inconsistent with constitutional provisions and laws vesting judicial power in judges as long as judges retain responsibility for making ultimate decisions.³

Issuance of warrant.

There is authority holding that the issuance of search warrant is a core judicial function and, therefore, court commissioners lack the authority to perform it.⁴ On the other hand, under court rules⁵ and statutory provisions⁶ in some states, court commissioners are expressly authorized to issue warrants. Where expressly authorized to do so, a court commissioner's lack of legal training will not preclude the commissioner from issuing a search warrant since a lay commissioner is not incapable of determining probable cause.⁷

Where a court commissioner is specifically vested with the power to issue warrants, a commissioner has the authority to make a probable cause determination following a warrantless arrest since the standard for issuance of arrest warrants is the same as that used in postarrest probable cause determinations.⁸

A trial commissioner may not issue a search warrant where he or she is a law partner of the county attorney requesting the warrant and, thus, is not neutral and detached in the matter.⁹

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Footnotes

- 1 Wyo.—*BAC v. BLM*, 2001 WY 83, 30 P.3d 573 (Wyo. 2001).
- 2 Ind.—*Barker v. State*, 622 N.E.2d 1329 (Ind. Ct. App. 1993).
- 3 La.—*Autrey v. Energy Corp. of America, Inc.*, 594 So. 2d 1354 (La. Ct. App. 3d Cir. 1992), writ denied, 596 So. 2d 197 (La. 1992).

For discussion of the extent of judicial power of a court commissioner, generally, see § 316.
- 4 Utah—*State v. Thomas*, 961 P.2d 299 (Utah 1998).
- 5 Ky.—*Dixon v. Com.*, 890 S.W.2d 629 (Ky. Ct. App. 1994).
- 6 Wash.—*State v. Moore*, 73 Wash. App. 805, 871 P.2d 1086 (Div. 2 1994).

Wis.—*State v. Evans*, 187 Wis. 2d 66, 522 N.W.2d 554 (Ct. App. 1994).
- 7 Wash.—*State v. Goss*, 78 Wash. App. 58, 895 P.2d 861 (Div. 2 1995).
- 8 Wis.—*State v. Evans*, 187 Wis. 2d 66, 522 N.W.2d 554 (Ct. App. 1994).
- 9 Ky.—*Dixon v. Com.*, 890 S.W.2d 629 (Ky. Ct. App. 1994).

As to disqualification to act, see § 319.

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